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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2011-0897; FRL-9499-9]

Revisions to the California State Implementation Plan, South
Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). This revision concerns oxides of nitrogen (NO_x) and oxides of sulfur (SO_x) emissions from facilities emitting 4 tons or more per year of NO_x or SO_x in the year 1990 or any subsequent year under the SCAQMD's Regional Clean Air Incentives Market (RECLAIM) program.

We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on [Insert date 60 days from the date of publication in the Federal Register] without further notice, unless EPA receives adverse comments by [Insert date 30 days from the date of publication in the Federal Register]. If we receive such comments, we will publish a timely withdrawal in the Federal Register to notify the public that this direct final

rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2011-0897, by one of the following methods:

1. Federal eRulemaking Portal: www.regulations.gov. Follow the on-line instructions.
2. E-mail: steckel.andrew@epa.gov.
3. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail.

www.regulations.gov is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California.

While all documents in the docket are listed at www.regulations.gov, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Lily Wong, EPA Region IX, (415) 947-4114, wong.lily@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" refer to EPA.

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I. The State's Submittal

- A. What rule did the State submit?

Table 1 lists the rule we are approving with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

Table 1 - Submitted Rules

Local Agency	Rule #	Rule Title	Adopted	Submitted
SCAQMD	2005	New Source Review for RECLAIM	06/03/11	09/27/11

On October 24, 2011, EPA determined that the submittal for SCAQMD Rule 2005 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

- B. Are there other versions of this rule?

Table 2 lists the previous version of this rule approved into the SIP.

Table 2 - Current SIP Approved Version of Rule

Rule #	Rule Title	Adopted	Submitted	Approved FR citation
2005	New Source Review for RECLAIM	05/06/2005	10/20/2005	08/29/2006 71 FR 51120

C. What is the purpose of the submitted rule revision?

NO_x helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control NO_x emissions.

The RECLAIM program was initially adopted by SCAQMD in October 1993. The program established for many of the largest NO_x and SO_x facilities in the South Coast Air Basin a regional NO_x and regional SO_x emissions cap and trade program, with the regional emissions caps declining over time until 2003. SCAQMD amended RECLAIM to lower the NO_x and SO_x emissions caps in 2005 and 2010 respectively. The program was designed to provide incentives for facilities to reduce emissions and advance pollution control technologies by giving facilities added flexibility in meeting emission reduction requirements. A NO_x or SO_x RECLAIM Trading Credit (RTC) is a limited authorization to emit one pound of NO_x

or SO_x during a specified one year period. A RECLAIM facility's emissions may not exceed its RTC holding in any compliance year.

A RECLAIM facility may comply with this requirement by installing control equipment, modifying their activities, or purchasing RTCs from other facilities.

The purpose of Rule 2005 was to address how the New Source Review (NSR) program requirements would be implemented in the context of a cap and trade program. Rule 2005 sets forth the pre-construction review requirements for new or modified equipment or processes at RECLAIM facilities.

The rule revision affects existing RECLAIM facilities subject to Rule 2005 whose annual allocation¹ do not exceed its 1994 starting allocation plus non-tradable credits. While such facilities are required to hold sufficient RTCs to offset emissions increases by the beginning of the first year, this rule revision eliminates the requirement to hold sufficient RTCs to offset emissions increases at the beginning of the second and subsequent years. SCAQMD states that the primary purpose of the revision to Rule 2005 was to alleviate the disincentives to existing facilities to modernize and replace older, more polluting equipment with newer and cleaner equipment.

II. EPA's Evaluation and Action

¹ The RECLAIM program at Rule 2000(c)(3) defines "allocation" as "the number of RECLAIM Trading Credits (RTCs) [as defined in paragraph (c)(63)] a RECLAIM facility holds for a specific compliance year, as referenced in the Facility Permit." Consequently, "annual allocation" means the amount of RTCs the facility holds for a compliance year, as authorized by its permit.

A. How is EPA evaluating the rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each NO_x or VOC major source in nonattainment areas (see sections 182(a)(2) and 182(f) of the Act), and must not relax existing requirements (see sections 110(l) and 193 of the Act). The SCAQMD regulates an ozone nonattainment area classified as extreme for the 8-hour ozone NAAQS (40 CFR 81.305), so the RECLAIM Program must fulfill RACT.

Guidance and policy documents that we use to evaluate enforceability and RACT requirements consistently include the following:

1. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_x Supplement), 57 FR 55620, November 25, 1992.
3. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).

4. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
5. "Economic Incentive Programs - EPA published the guidance, "Improving Air Quality with Economic Incentive Programs" on January 2001 (EPA-452/R-01-001). The guidance available at <http://www.epa.gov/ttncaaa1/t1/meta/m1201.html>. This guidance applies to discretionary economic incentive programs (EIPs) and represents the agency's interpretation of what EIPs should contain in order to meet the requirements of the Clean Air Act. Because this guidance is non-binding and does not represent final agency action, EPA is using the guidance as an initial screen to determine whether potential approvability issues arise.

B. Does the rule meet the evaluation criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. While the CAA RACT requirements apply to the RECLAIM program as a whole, the requirements do not specifically apply to Rule 2005 because Rule 2005 addresses the NSR permit program requirements.

In EPA's original approval of the RECLAIM program, EPA determined that the RECLAIM program met the CAA RACT requirements. This amendment does not change EPA's previous determination. This revision has no effect on allowable

emissions and would not result in emissions increases. Furthermore, this revision is consistent with EPA's original understanding of how the NSR offset requirement would be implemented in the RECLAIM program. EPA's November 8, 1996 limited approval and limited disapproval of RECLAIM (61 FR 57775) stated, "The NSR offset requirements would only be triggered if a particular facility exceeded its initial RECLAIM allocation plus nontradeable emission allocation." (see 61 FR 57777) The Technical Support Document (TSD) has more information on our evaluation.

C. EPA recommendations to further improve the rule.

The TSD describes additional rule revisions that we recommend for the next time the local agency modifies the RECLAIM rules.

D. Public comment and final action.

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this Federal Register, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by [Insert date 30 days from date of publication in the Federal Register], we will publish a timely withdrawal in the Federal Register to

notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on [Insert date 60 days from date of publication in the Federal Register]. This will incorporate the rule into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations, Nitrogen
dioxide, Ozone, Reporting and recordkeeping requirements.

November 18, 2011

Dated:

Jared Blumenfeld,
Regional Administrator,
Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52 [AMENDED]

1. The authority citation for Part 52 continues to read as follows:

AUTHORITY: 42 U.S.C. 7401 et seq.

Subpart F - California

2. Section 52.220, is amended by adding and reserving paragraph (c)(403) and by adding paragraph (c)(404) to read as follows:

§52.220 Identification of plan.

* * * * *

(c) * * *

(404) New and amended regulations for the following APCDs were submitted on September 27, 2011, by the Governor's Designee.

(i) Incorporation by Reference

(A) South Coast Air Quality Management District

(1) Rule 2005, "New Source Review for RECLAIM," amended on June 3, 2011.